Editor's note: Appealed -- aff'd, Civ.No. 85-C-730S (D.Utah, June 20, 1986)

AMCA COAL LEASING, INC.

IBLA 84-412 Decided March 29, 1985

Appeal from decision of the Utah State Office, Bureau of Land Management, denying objections to the proposed terms and conditions upon readjustment of coal lease SL-063058.

Affirmed.

1. Coal Leases and Permits: Leases--Rules of Practice: Appeals: Timely Filing

> Where a coal lessee is notified of the terms and conditions of the coal lease upon modification and is informed of the effective date assigned to the lease, such lessee must timely object or thereafter be barred from arguing the propriety of the modified lease's terms and conditions.

APPEARANCES: John S. Kirkham, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

AMCA Coal Leasing, Inc. (AMCA), appeals from a March 7, 1984, decision of the Utah State Office, Bureau of Land Management (BLM), denying objections to the readjustment of coal lease SL-063058, effective March 1, 1984.

A coal lease for 80 acres, SL-063058 was originally issued pursuant to the Mineral Leasing Act, 30 U.S.C. § 201 (1970), on August 3, 1942. After various assignments and modifications, the enlarged lease, covering 240 acres, was assigned to AMCA in November 1976. The assignment was approved by BLM effective February 1, 1977. AMCA filed a joint application on February 24, 1981, to modify three of its leases, including SL-063058, to avoid situations where coal contained in small tracts contiguous to the leases would otherwise be bypassed by its mining operations. Pursuant to this application, the subject lease was modified on October 26, 1981, to include an additional 160 acres. 1/ Although many terms and conditions of the original lease were

1/ The 400 acres are described in the readjusted lease form as follows: "T. 13 S., R. 11 E., SLM, Utah
"Sec. 8, S 1/2 SW 1/4;
"Sec. 17, NW 1/4, NE 1/4 NW 1/4 SW 1/4, W 1/2 NW 1/4 SW 1/4;
"Sec. 18, NE 1/4 NE 1/4, E 1/2 SE 1/4 NE 1/4, NW 1/4 SE 1/4 NE 1/4,
"SW 1/4 NE 1/4, E 1/2 NE 1/4 SE 1/4."

adjusted to conform to the provisions of the Federal Coal Lease Amendments Act of 1976 (FCLAA), 30 U.S.C. §§ 201-209 (1982), certain items, such as production royalty, were distinguished for the lands added by the modification.

Several months later, BLM sent a notice to AMCA dated January 19, 1982, stating its intent to readjust the lease at the end of the 20-year lease period ending on August 3, 1982. A notice of the proposed readjusted terms and conditions dated December 23, 1983, was sent to AMCA and, pursuant to the opportunity provided, AMCA filed an objection to the proposed terms on February 28, 1984. Protesting the increase in production royalty, AMCA asserted that the rate established in the modified lease was for a 10-year duration, or until October 26, 1991. It also alleged that the readjustment was not made in a timely manner, i.e., before the end of the 20th year.

In its March 7, 1984, decision, BLM denied AMCA's objections and declared a March 1, 1984, effective date for the readjusted conditions and terms of the lease. BLM ruled that the readjustment was timely by reference to 43 CFR 3451.1(c)(1), (2), which provides that the lease may be readjusted within 2 years after notice of the readjusted terms or intent to readjust, if such notice was sent prior to the expiration of the current 20-year period. BLM responded to AMCA's objection to the increase in the production royalty by indicating that the effective date of the lease was August 3, 1942, and therefore the lease is to be readjusted according to subsequent lease periods calculated from that date. BLM stated that section 7(a) of the Mineral Leasing Act, as amended, 30 U.S.C. § 207(a) (1982), and 43 CFR 3473.3-2(a)(3) establishes the minimum production royalty applicable to a Federal coal lease upon readjustment, and concluded that readjustment of the production royalty was in accordance with these provisions. AMCA timely appealed BLM's decision.

In its statement of reasons, AMCA asserts that, with the execution of the modified coal lease, AMCA and BLM entered into a new contractual relationship which is not subject to readjustment until October 20, 2001. It argues that language establishing the effective date for the modified lease is vague and, because construction of the terms should be rendered in its favor, the intended effective date should be construed as October 20, 1981. To emphasize such construction, it flags several sections of the modified lease where the instructions are contrary to management of the lease prior to modification but have been written to require fulfillment of obligations commencing with the "effective date."

[1] The Board has held that a modification of a coal lease involves the entry into a new or modified lease contract by mutual intent of the parties no less than a readjustment of a coal lease. Spring Creek Coal Co., 83 IBLA 159, 162 (1984). A coal lease modification is a readjustment except that:

> Modification of coal leases since 1976 is governed by section 13 of FCLAA, 30 U.S.C. § 203 (1982), which provides in part: "The Secretary shall prescribe terms and conditions which shall be consistent with this Act [FCLAA] and applicable to all of the acreage in such modified lease." Subsequent to enactment of FCLAA, the House Report on what became the 1978 Amendment to the Mineral Leasing Act noted that lessees with

> leases issued before FCLAA were reluctant to apply for modifications of their leases after FCLAA because "they would be faced with having to accept the more stringent requirements of the [FCLAA] for the entire lease area." H.R. Rep. No. 1635, 95th Cong., 2d Sess. 3, reprinted in 1978 U.S. Code Cong. & Ad. News 4736, 4737. Consequently, in 1978 Congress amended the modification provisions by granting relief from the FCLAA-established minimum royalty provision and from production or mining plan requirements for modified leases. 92 Stat. 2074, 30 U.S.C. § 203 (1982). Relief from application of other FCLAA-mandated terms and conditions, including deletion of the rental crediting provision, was not afforded to modified leases by the 1978 amendment.

In 1979, the Department promulgated rules and regulations governing post-FCLAA lease modifications and the resultant subsection describing which terms and conditions are applicable after modification appears as follows:

> The terms and conditions of the original lease shall be made consistent with the laws, regulations, and lease terms applicable at the time of modification except that if the original lease was issued prior to August 4, 1976, the minimum royalty provisions of section 6 of [FCLAA] (30 U.S.C. 207; 43 CFR 3473.3-2) shall not apply to any lands covered by the lease prior to its modification until the lease is readjusted.

43 CFR 3432.3(a) (published at 44 FR 42632 (July 19, 1979)).

> Therefore, all of the acreage in a modified lease becomes subject to the prevailing statutes and regulations except with regard to the minimum royalty provision.

Id. at 161.

After BLM applied these guidelines to modification of coal lease SL-063058, it identified the lands of the original lease as Tract 1 and the added lands as Tract 2. BLM applied the minimum royalty provision in effect prior to the modification to Tract 1 and the minimum royalty scheme imposed by FCLAA and its implementing regulations to Tract 2. All other terms and conditions in the modified lease were made to conform with FCLAA. The lease form used by BLM for this modified lease was the standard coal lease form designed to implement FCLAA requirements. The original section 6 of the form, providing for minimum production royalty pursuant to FCLAA, was deleted to create the modified lease document and a substitute section 6 provision was included implementing the rates as previously explained. BLM, however, apparently neglected to change the remaining lease sections to reflect that the lease was modified and not readjusted.

The modified lease states: "This lease is entered into on October 26, 1981, by [BLM as lessor and AMCA as lessee] and shall become effective on August 3, 1942, (effective date)." AMCA contends that the effective date is

expressed here in an ambiguous manner and claims that the general principles of contract law should determine construction of the objectionable lease terms in its favor. Indeed, in choosing among the reasonable meanings of a term, interpretation against the party who supplied the writing is generally preferred. Restatement (Second) of Contracts, § 206 (1981). However, this rule is applicable where, in cases of doubt and in the absence of other decisive factors, there is substantial reason for preferring the meaning of the other party. Id., § 206 comment a. Before adopting this approach, the general rules of construction should be applied to ascertain the reasonable meanings of the contested term. First, all the circumstances must be considered when interpreting the contract. Id., § 202(i). Review of the record reveals a BLM decision dated October 14, 1981, in which the following explanation was provided to AMCA:

> Rental [must be paid] on the modified area at the rate of $ 3 per acre for the period of November 1, 1981 to August 3, 1982, inclusive, a total of $ 364 for SL-063058 * * *. The additional rental is required for the period from the date [lease SL-063058 is] modified to the next anniversary date of the original lease. [Decision dated Oct. 14, 1981 at 1; emphasis added.]

This language indicates an intent of BLM to continue lease management based on the August 3, 1942, effective date.

Manifestations of intent are also interpreted through reference to relevant prior conduct under the agreement. See Reinstatement (Second) Contracts, supra at § 202(4), § 202 comment g. As a voluntary assignee of the lease interests, AMCA has obtained both the privileges and the duties previously delegated to its predecessors. As a lessee, it is therefore responsible for previous lease incidents which directly affect its interests in the lease. From the record, we find that the lease was originally issued on August 3, 1942, for 80 acres. The lease was modified on July 27, 1950, to include 120 acres of additional land and on December 13, 1951, to include another 40 acres. Despite these modifications of the lease, the effective date of the lease remained unchanged and the lease was readjusted and approved for continuation. See Decision issued August 23, 1962. Thus, the pattern established for management of SL-063058 after it was modified is contrary to the scenario suggested by appellant.

Based on the explanation provided to appellant and the knowledge and acceptance of past BLM practices, which must be imputed to it, we find that the clear import of the lease as modified is that the lease is to be considered effective August 3, 1942, for all the identified lands. If appellant objected to this, it had an obligation to voice its objection when notified of the proposed terms and conditions and before accepting those terms through execution of the lease document. Indeed, an opportunity to appeal the proposed terms and conditions to this Board was provided in the decision transmitting the modified lease forms. Moreover, if AMCA perceived any inconsistencies in the lease created by its interpretation of the effective date identified by BLM, it should have also sought clarification or presented its objections at that time. AMCA did not object, but voluntarily accepted the terms found in the modified lease. In this regard, it is too late for appellant to challenge the terms of the modified coal lease. Appellant, therefore,

is forestalled from pursuing this matter in the context of the readjustment of the original lease. Mid-Continent Coal & Coke Co., 83 IBLA 56 (1984). We must reject AMCA's argument that the 1981 modification of coal lease SL-063058 precluded its readjustment by BLM effective March 1, 1984.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appealed decision is affirmed. 2/

Franklin D. Arness
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

R. W. Mullen
Administrative Judge.

2/ This decision does not preclude appellant from seeking rate relief under authority of 30 U.S.C. § 209 (1982) and 43 CFR 3473.3-2(d).